

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In re Application of	)	
	)	
<b>La Promesa Foundation</b>	)	NAL/Acct. No. MB-200741410186
	)	FRN: 0006602130
Licensee of	)	
FM Translator Station K217CM	)	Facility I.D. No. 79275
Clayton, New Mexico	)	File No. BRFT-20050728ABG

**FORFEITURE ORDER**

**Adopted: April 9, 2010**

**Released: April 12, 2010**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order we issue a monetary forfeiture in the amount of two hundred and fifty dollars (\$250) to La Promesa Foundation ("Licensee"), licensee of FM translator station K217CM, Clayton, New Mexico ("Station"), for its willful violation of Section 73.3539 of the Commission's Rules ("Rules")<sup>1</sup> by failing to timely file a license renewal application for the Station.

**II. BACKGROUND**

2. On February 12, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of one thousand, five hundred dollars (\$1,500) for this violation.<sup>2</sup> As noted in the NAL, Licensee's renewal application for the Station should have been filed on June 1, 2005, four months prior to the Station's October 1, 2005, expiration date, but was not.<sup>3</sup> Licensee did not file its renewal application until July 28, 2005, and provided no explanation for its late filing. In response to the NAL, Licensee submitted a letter ("Response") on, March 14, 2007.

3. In its Response, Licensee states that (1) its failure to timely file the renewal application was unintentional; and (2) the proposed forfeiture violates the fair notice principles stated in *Rust Communications*<sup>4</sup> and the fairness and equity principles stated in *Melody Music*.<sup>5</sup> Licensee asserts that these reasons warrant cancellation or a substantial reduction of the proposed forfeiture.

<sup>1</sup> 47 C.F.R. § 73.3539.

<sup>2</sup> *La Promesa Foundation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2687 (MB 2007). The Commission granted the license renewal application on February 12, 2007. File No. BRFT-20050728ABG. See *Broadcast Applications*, Public Notice Report No. 26039 (August 2, 2005).

<sup>3</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

<sup>4</sup> *U.S. v. Rust Communications Group, Inc.*, 425 F. Supp. 1029 (E.D. Va. 1976) (where regulations are subject to interpretation, courts will grant deference to agency interpretation; this deference is tempered, however, if the agency action is penal in nature) ("*Rust Communications*").

<sup>5</sup> *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965) (the Commission must explain its disparate treatment of contemporaneous cases with similar underlying facts) ("*Melody Music*").

### III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (the “Act”),<sup>6</sup> Section 1.80 of the Rules,<sup>7</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>8</sup> In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>9</sup>

5. Licensee does not dispute that it failed to file the Station’s renewal application on time, but states that this violation was unintentional. Specifically, Licensee states that it timely filed the renewal applications for its other five translator stations, all licensed in Texas, but inadvertently failed to file the Station’s renewal application.<sup>10</sup> As the Commission has held, however, violations resulting from inadvertent error are willful violations.<sup>11</sup> In the context of a forfeiture action, “willful” does not require a finding that the rule violation was intentional. Rather, the term “willful” means that the violator knew that it was taking (or, in this case, not taking) the action in question, irrespective of any intent to violate the Rules.<sup>12</sup> Licensee also argues that, pursuant to *Rust Communications*, the Commission is foreclosed from assessing a monetary penalty for late filing because Form 303-S and Section 73.3539 of the Rules give no warning of a possible monetary penalty.<sup>13</sup> It also argues that no monetary penalty can be assessed here because Section 1.80 of the Rules lists no forfeiture amount for late filing, only “failure to file a required form.”<sup>14</sup> We disagree. It is well settled that the Commission may impose forfeiture for a late-filed renewal application.<sup>15</sup>

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<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>9</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>10</sup> Response at 5.

<sup>11</sup> See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”) (stating that “inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”).

<sup>12</sup> See *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649, 2651 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee’s administrative error); *Southern California*, 6 FCC Rcd at 4387. See also *Spokane Public Radio, Inc.*, Forfeiture Order, 25 FCC Rcd 1416, 1417-18 (MB 2010) (declining to reduce forfeiture amount where licensee operating translators in states with different renewal cycles filed all of its translators on one renewal application, thus missing the filing deadline for at least one translator).

<sup>13</sup> Response at 3-4.

<sup>14</sup> Response at 3.

<sup>15</sup> See *Bible Broadcasting Network, Inc.*, Forfeiture Order, 25 FCC Rcd 428, 429 (MB 2010) (rejecting argument that Section 1.80 of the Rules constrains the Commission to impose forfeiture orders to instances in which applications are not filed at all, as opposed to untimely-filed applications, and noting that it is well-settled that the Commission may impose a forfeiture for a late-filed renewal application); see also *Bible Broadcasting Network, Inc.*, Forfeiture Order, 23 FCC Rcd 8743 (MB 2008) (assessing a monetary forfeiture in the amount of \$250 for licensee’s willful violation of Section 73.3539 of the Rules); *Good News Translator Assoc.*, Memorandum Opinion and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20922 (MB 2007) (same).

6. Finally, Licensee argues that the forfeiture amount was a departure from past practice and therefore unfair, citing to *Melody Music*.<sup>16</sup> Again, we disagree. Licensee incorrectly compares its violation in 2005 to that of a licensee from the last renewal cycle, whose application was granted in 1998.<sup>17</sup> The unpublished grant of a renewal application by the staff from the previous renewal cycle is not controlling precedent in this case.<sup>18</sup> Pursuant to *Melody Music*, imposing a forfeiture in this case is consistent with recent decisions involving untimely renewal applications.<sup>19</sup> However, our recent practices do allow for a reduction to \$250 for instances of late-filed renewal applications involving FM translator stations, which we will apply here.<sup>20</sup> We therefore find that a \$250 forfeiture amount in the instant case is appropriate and consistent with recent precedent involving violations of Section 73.3539 of the Rules.<sup>21</sup>

7. We have considered Response and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully<sup>22</sup> violated Section 73.3539 of the Rules. However, for the reasons described above, we reduce the forfeiture amount *sua sponte* to two hundred and fifty dollars (\$250).

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,<sup>23</sup> that La Promesa Foundation SHALL FORFEIT to the United States the sum of two hundred fifty dollars (\$250) for willfully violating Section 73.3539 of the Commission's Rules.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>24</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal

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<sup>16</sup> *Melody Music*, *supra*, n. 5.

<sup>17</sup> Response at 4. See File No. BR-19970620WA.

<sup>18</sup> See *New Inspiration Broadcasting Co.*, Forfeiture Order, 24 FCC Rcd 3205, 3206 n. 12 (MB 2009).

<sup>19</sup> See *Carbon County*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 2081 (MB 2007) (translator station issued a \$1,500 forfeiture for a late-filed renewal application); *Boundary County TV Translator District*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 2695 (MB 2007) (same); *Calvary Chapel of Twin Falls*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 33080 (MB 2007) (same).

<sup>20</sup> See, e.g., *Valley Baptist Church and Christian School*, Forfeiture Order, 23 FCC Rcd 8740, 8742 (MB 2008) (reducing *sua sponte* forfeiture amount from \$1,500 to \$250 for translator station's late renewal filing); *Good News Translator Assoc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20922, 20923 (MB 2007) (finding translator licensee apparently liable for monetary forfeiture in the amount of \$250 for its willful violation of Section 73.3539 of the Rules); *Bible Broadcasting Network, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 11445, 11446 (MB 2007) (same).

<sup>21</sup> *Id.*

<sup>22</sup> Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. NO. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the term in the Section 503(b) context. See *Southern California*, 6 FCC Rcd at 4387-88.

<sup>23</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>24</sup> 47 U.S.C. § 504(a).

Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank--Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).<sup>25</sup> Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.<sup>26</sup>

10. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return, Receipt Requested, and by First Class Mail to: La Promesa Foundation, 1406 E. Garden Lane, Midland, Texas, 79701, and its counsel, Dennis J. Kelly, Esq., Law Office of Dennis J. Kelly, P.O. Box 41177, Washington, D.C. 20018.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>25</sup> See 47 C.F.R. § 1.1914.

<sup>26</sup> *Id.*